



A GUIDE TO THE PRIVACY CHARTER

TABLE OF CONTENTS

I. PRIVACY CHARTER	Page 3
II. GUIDE QUICK FIND	Page 6
III. INTRODUCTION AND PURPOSE	Page 7
IV. INFORMATION CATEGORIES	
A. MUST SHARE	Page 8
B. SHOULD SHARE	Page 8
C. SHOULD NOT SHARE	Page 10
V. OVERVIEW OF LEGISLATION	
A. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT	Page 11
B. CHILD, FAMILY AND COMMUNITY SERVICE ACT	Page 12
C. YOUNG OFFENDERS ACT	Page 13
D. FEDERAL PRIVACY ACT	Page 13
E. ADOPTION ACT	Page 13
VI. INFORMATION SHARING	
A. INFORMED CONSENT	Page 14
B. "NEED TO KNOW" PRINCIPLE	Page 15
C. INFORMATION SHARING WITHIN A PROGRAM	Page 15
D. INFORMATION SHARING ACROSS PROGRAMS	Page 16
E. INFORMATION SHARING WITH CLIENTS	Page 17
F. INFORMATION SHARING WITH CLIENT'S FAMILY MEMBERS	Page 18
G. INFORMATION SHARING WITH OTHER GOVERNMENT OFFICIALS	Page 19
H. INTEGRATED SERVICE DELIVERY & INTEGRATED CASE MANAGEMENT	Page 20
I. "FAIR INFORMATION PRACTICES" GUIDELINES	Page 20
VI. DISPUTE RESOLUTION	Page 21
APPENDICES	
A. FAIR INFORMATION PRACTICES LIST	
B. DEFINITIONS	
C. SCENARIOS	
D. PROTOCOL AGREEMENT	
E. LEGISLATION	

Privacy Charter

Ministry for Children and Families

The Ministry for Children and Families has a broad and complex mandate carried out via working partnerships between various individuals and agencies in different program areas—both internal and external to the Ministry: the Ministry's service partners. These service partners include social workers, public health nurses, alcohol and drug counselors, mental health clinicians, family support workers, youth justice workers, First Nations and Aboriginal communities, child care providers, doctors, teachers, group home staff and foster parents — all operating under different pieces of legislation and different policy and practice guidelines.

For us to work together, to do our jobs properly and to serve our clients well, we need to be very clear about what information is necessary or appropriate to share about a particular client. We also need to be very clear about our obligations to our clients and their right to know how information about them will be used, with or without their consent.

Purpose & Scope

This Privacy Charter provides a guide to the way in which we — specifically, staff of service partners, including ministry staff — share information about our clients.

It is called a Privacy Charter to indicate clearly that we understand our clients have a legal right to privacy.

As this Charter also makes clear, however, we recognize that there are times when information must be shared when a situation justifies overriding that right to privacy to ensure the safety of our clients, their families, our staff or communities.

We define a "client" as anyone who receives services directly from the Ministry for Children and Families or from individuals or agencies funded by the Ministry for Children and Families.

This Charter assumes that all service partners, including Ministry Staff, have a full understanding of the legislation, policies and practices that govern their relationships with children, youth and families.

It also assumes that all service partners, including ministry staff, will act professionally and appropriately in requesting or receiving confidential information and will use confidential information only in the best interests of the client and/or the community.

Obligation to Our Clients

We have an obligation to:

- discuss with all our clients what information may be shared about them, when and with whom.
- inform our clients that their right to privacy does have limitations: under certain specific circumstances, we may be required to disclose personal information about them that could have a significant impact on their lives.
- ask our clients, when possible and appropriate, for their informed consent before sharing specific information with anyone else – but let them know that we will share this information without their consent in extraordinary circumstances.
- apply the same rules of what should and should not be shared to all methods of transmitting information about a client either verbally, electronically or in print.

Child and youth clients have the same right to privacy as do adult clients.

Where there are competing privacy interests between children and parents, the child's right to health, safety and well-being is primary.

To determine who should give informed consent – the parent or the child – service partners, including Ministry staff, should be guided by the age and maturity of the individual child and their knowledge of the case.

"Informed consent" is the client's agreement to sharing information, based on full knowledge of what information will be shared, who it will be shared with and for what purpose.

Obligation to Each Other

When we request information from a service partner, including Ministry staff, it is our responsibility to give that person a clear explanation of why we need the information and for what we will use it.

When we receive a request for information from a service partner, including Ministry staff, it is our responsibility to weigh that request against the client's right to privacy and against the criteria for "should share" information: whether it is necessary to ensure continuity of care, integrated case management or quality of service. If we have serious doubts about whether or not to share information, these doubts must be resolved in favour of the safety and well-being of children.

Information Categories

The personal information we collect from and about our clients can be roughly divided into three categories: information we must share, information we should share, and information we should not share.

- **Must Share**

We must share information that:

- we are required to share under the law, by Court order or specific written policy
- that stems from relevant legislation; and
- it is our duty to share to protect the health, safety and well-being of our clients or others.

- **Should Share**

We should share information that is necessary to support continuity of care, integrated case management or quality of service.

- **Should Not Share**

We should not share information that is not relevant to the case or share information that is not absolutely necessary to assist our clients and fulfill our job requirements.

Dispute Resolution

- Where there is a disagreement between service partners, including ministry staff, about whether or not to share information, anyone involved in the dispute may choose to refer the case to the ministry's regional Quality Assurance Manager. The manager, neutral and well-trained in privacy and information sharing issues, will decide the case within five working days except in cases where there is a legitimate health and safety issue. Where there is deemed to be an issue of a health or safety nature, immediate response is required.
- Where a client (or the parent of a client) disagrees with a decision to share or not share information, the client should go first to the involved local agency or Ministry for Children and Families office to discuss the case. The client also has the right to request the Ministry's Information and Records Services Branch investigate the situation, and/or file a complaint with the Information and Privacy Commissioner.

II. GUIDE QUICK FIND

CHART TOPIC	GUIDE PAGE NUMBER
Children's safety and well being	Pages 8, 10, & 12
Client's right of access to information	Pages 17 & 18
Client's right to know how information is shared	Pages 7 & 14
Client's right to know how information is collected	Pages 7 & 14
Client's right to privacy has limitations	Pages 7, 8 & 14
Dispute resolution	Page 21
Information sharing, health and safety	Pages 8, 10,12,13,17 & 18
Informed consent	Page 14
Integrated case management	Pages 8,9, & 20
Legislation, relevant to information sharing	
- Adoption Act	Page 11,13, & 14
- Child, Family and Community Service Act	Pages 8,10,11,12,14,16,18,20
- Federal Privacy Act	Page 11 & 13
- Freedom of Information and Protection of Privacy Act	Pages 10,11,14,16,18 & 20
- Young Offenders Act	Pages 10,11,13,14,16,18,20
Must share information	Page 8
Obligation to clients	Pages 16,17 & 18
Obligation when asked to share information	Pages 10, 15, 17 & 19
Obligation when requesting information from others	Pages 10, 15, 17 & 19
Should not share information	Page 10
Should share information	Page 8

III. INTRODUCTION

The Ministry for Children and Families has a broad and complex mandate carried out via working partnerships between various individuals and agencies, in different program areas - both internal and external to the Ministry; the Ministry's service partners.*

For us to work together, to do our jobs properly, to follow legal requirements and to serve our clients well, we need to be very clear about what information is necessary and appropriate to share about a particular client. We also need to be very clear about our obligations to our clients, and their right to know how information about them will be maintained, used and disclosed, with or without their consent.

Purpose

The Guide to the Privacy Charter examines the parameters of information sharing practices of both ministry staff and contracted agencies or individuals who provide services to the Ministry's clients.

The Guide to the Privacy Charter is intended to expand on, and serve as a follow up piece to the Privacy Charter. The Guide defines "must share", "should share", and "should not share" information, and provides real life scenarios to illustrate their significance. It also provides an overview of applicable legislation and its impact on the major service delivery areas, delves into "informed consent" and the "need to know" principle, and concludes with a section that deals with the dispute resolution process. The dispute resolution mechanism is an integral component of the Privacy Charter, as it outlines avenues that may be pursued in cases where there is disagreement amongst service partners, including ministry staff, or with a client as to what information should/should not be disclosed. A list of key definitions that relate to information sharing and privacy will be found in Appendix B.

The Guide does **not** provide answers to all of the questions that may arise in the area of information sharing or privacy issues. The "right" answer to a specific question or issue will depend on the details of the individual situation, which must be considered on its own merits and in the context of the specific legislation that applies. **If there are ever serious doubts about whether or not information should be shared, the doubts must be resolved in favor of the safety and well-being of children.**

The Privacy Charter and the Guide to the Charter replace the previously distributed Ministry for Children and Families Information Sharing Policy.

* Service partner is a generic term that includes, but is not limited to, social workers, public health nurses, alcohol and drug counselors, mental health clinicians, family support workers, youth justice workers, First Nations and Aboriginal communities, doctors, child care providers, teachers, group home operators and foster parents - each operating under different pieces of legislation and different policy and practice guidelines.

IV. INFORMATION CATEGORIES

The personal information we collect from and about our clients can be roughly divided into three categories: information we must share, information we should share, and information we should not share.

A Must Share

We **must** share information when:

- we are **required** to share under the law, by Court order or specific written policy that stems from relevant legislation
- it is our **duty** to share information to protect the health, safety and well-being of our clients or others

The legislative overviews and guidelines outlined in Section V should also be considered.

Examples:

When a child may need protection from abuse or harm, information must be shared in accordance with the *Child, Family and Community Service Act* (CFCSA).

- A mental health clinician becomes aware of some possible child protection concerns as a result of information obtained from a client or through direct observation. The mental health clinician is required to share some personal information about the client in order to comply with their duty to report child protection concerns under s. 14(1) of the CFCSA.
- A child protection social worker conducting a child protection investigation contacts an alcohol and drug worker, requesting that information be shared pursuant to s. 96(1) of the CFCSA. The alcohol and drug worker **must** share the information in compliance with s. 96(2) of the CFCSA.

B. Should Share

The Ministry for Children and Families has a commitment to providing an integrated approach regarding its delivery of services to children, adults and their families. Without integrated case management, services to families can suffer and there is a greater potential for things to “fall through the cracks”. In order for effective integrated case management to occur, there will be times where it will be appropriate for service partners, including ministry staff, to share personal information regarding clients as **necessary** to support continuity of care and the principles of integrated case management.

An important aspect of this integrated approach to service delivery is the ministry's Strategic Plan for Aboriginal Services. The Strategic Plan envisions partnerships with Aboriginal communities; communications and information sharing are central to building those partnerships. Information should be shared to facilitate Aboriginal communities' participation in planning and delivering services to their children and families.

The legislative overviews and guidelines outlined in Section V should also be considered.

Examples:

- A teacher has noted a negative change in a student's behavior and contacts the school counselor. The child informs the school counselor that their family is working with an MCF social worker. The school counselor contacts the social worker to find out the supports that have been put in place for the family, to assist them in dealing with the issues that have led to the child's behavior. The school and social worker have no protection concerns regarding this family.

It is important for the child to receive consistent support at home and at school. This may require the sharing of information among service partners to ensure the well-being of the child. It may be advantageous to involve the school counselor in the integrated case management team, and the social worker may be included in the school based team that supports the child to ensure that a comprehensive integrated single plan and complementary supports are in place.

- A social worker is developing a plan of care for a child-in-care who is a member of a local Band. While the CFCSA requires that the Band be notified and involved in planning for the child, it does not say how that is to be done. Information regarding how to involve the Band in this process may be obtained through the specific protocol in place between the Region and the Band, as well as in ministry policy.
- A youth probation officer is supervising a young person on probation under the YOA. One of the conditions of the probation order is that the young person attends counseling. If the youth probation officer contacts the counselor to confirm the attendance of the young person in a program, it would be appropriate for the counselor to share that information.

C. Should Not Share

We should **not** share information that is not relevant to the case, and we should not request information that we do not **need** to know to assist our clients and fulfill our job requirements. Information should not be shared if disclosure of the information could reasonably be expected to place a person at risk. There are also some instances where we **must not** share personal information, as disclosure is prohibited by law.

The *Young Offenders Act (Canada)* prohibits the publishing of any report that discloses the identity of a young offender, the identity of an individual who is a victim of a YOA offense as well as the identity of a child or young person who appeared as a witness in connection with an offense.

The *Child, Family and Community Service Act* prohibits the disclosure of information that could reasonably be expected to reveal the identity of a person who has made a child protection report (unless the reporter has consented to the disclosure).

The legislative overviews and guidelines outlined in Section V should also be considered.

Examples:

- The police contact an agency or ministry office and request to view a client file. Section 33(n) of the FOIPPA **permits** this disclosure, but does not **require** it. The police must be able to demonstrate the authority or need for the information (due to a current investigation, for example) before the service partner, including ministry staff, agrees to share the client's personal information. In addition, service partners are within their rights to question what specific kind of information is necessary, as there may be sensitive information on the file that would not be appropriate or necessary to disclose.
- A father who has a history of being abusive to his children requests information on services provided to one of his children. If there is reason to believe (based on previous history with the father) that disclosure of the information to the father could reasonably be expected to put the child at further risk, the service partner, including ministry staff, could withhold all or part of the information to ensure the health and safety of the child. Even though the father may be entitled to access the children's information (per s. 76(2) of CFCSA or s. 3 of the FOIPPA regulations), this does **not** preclude the ability to withhold information under s. 77(2)(b) of the CFCSA or s. 19 of the FOIPPA.

V. OVERVIEW OF LEGISLATION AND IMPLICATIONS FOR SERVICE DELIVERY

Personal information that is under the custody or control of the Ministry for Children and Families is protected by three distinct pieces of legislation [the *Freedom of Information and Protection of Privacy Act*, the *Child, Family and Community Service Act* and the *Young Offenders Act (Canada)*]. While these three statutes differ from each other in many ways, they all allow service partners, including ministry staff to share personal information in order either to perform a function under the Act or to ensure somebody's safety.

It is important to note that both the *Child, Family and Community Service Act* and the *Young Offenders Act (Canada)* take precedence over the *Freedom of Information and Protection of Privacy Act*. The *Child, Family and Community Service Act* expressly states that the FOIPPA does not apply to a record made under CFCSA (except as provided in Part Five of the CFCSA). The *Young Offenders Act(Canada)* takes precedence over the FOIPPA and the CFCSA as the YOA is federal legislation, which supersedes provincial legislation in areas of federal jurisdiction. Key sections of each of these statutes are found in Appendix E.

In addition, there are two other pieces of legislation (the *Adoption Act* and the federal *Privacy Act*) that service partners, including ministry staff, should be aware of that relate to the protection or disclosure of personal information.

A. *Freedom of Information and Protection of Privacy Act*

This statute takes precedence over other provincial legislation unless another Act expressly provides that it, or a provision of it, applies despite the FOIPPA. The *Child, Family and Community Service Act* and the *Young Offenders Act(Canada)* take precedence over the FOIPPA (see above). Thus, records created under these two pieces of legislation are **not** subject to the access or disclosure provisions of the FOIPPA.

Section 33 of the FOIPPA sets out the circumstances under which service partners, including ministry staff, may disclose personal information between, as well as within, their offices. This section **permits** disclosure; it does not **require** it. This means that a service partner, including the ministry, must use its discretion and must consider each situation on its own merits. A copy of s. 33 of the FOIPPA is available in Appendix E.

Some of the circumstances under which personal information **may** be shared include:

- when the person the information is about has **consented** to the disclosure
- when **required** in order to allow service partners, including ministry staff, to exercise their statutory authority or program duties and functions

- when **required** under another statute (for example, under s. 14 or 96 of the *Child, Family and Community Service Act*)
- when **necessary** to ensure the health and safety of any person
- when the purpose for which the information is being shared is consistent with the purpose for which the information was obtained; when there is a reasonable and direct connection between the reason the personal information was collected and the reason it is being disclosed.

B. *Child, Family and Community Service Act*

Part 5 of this statute has customized provisions to deal with confidentiality and disclosure within the context of child protection and preventive service work and clearly states that except as provided in this Part, the FOIPPA does **not** apply to a record made under the *Child, Family and Community Service Act* or to information in that record. A copy of key sections of this statute is available in Appendix E.

Some of the circumstances under which personal information may be shared include those previously mentioned under FOIPPA as well as:

- when the disclosure is **necessary** to ensure the safety or well-being of a child
- when the disclosure is **necessary** for a family conference or mediation under the Act (in accordance with s. 24 or s. 79 of the Act)
- disclosing information to caregivers regarding the children in their care

The Director of Child Protection has delegated authority to some social workers employed by Aboriginal child and family service agencies. In the above-noted circumstances, information may and should be shared with delegated workers of an Aboriginal agency.

The CFCSA, s. 96, also provides authority for the director to have the right to access **any** information that is held by a public body (as defined in the FOIPPA) that is **necessary** to enable the director to exercise his or her powers or to perform the duties or functions under the CFCSA. On request, the Act **compels** public bodies to provide the requested information to the director, and states that this provision takes precedence over any other enactment. This provision does not override federal legislation, or a claim of privilege based on a solicitor-client relationship. Thus, the director could not exercise his/her authority under s. 96 to **compel** a federal public body (for example, the R.C.M.P) to disclose any information.

C. Young Offenders Act

Information obtained as a result of the operation of, or court order under, the *Young Offenders Act* (Canada) is governed by that Act. The YOA places restrictions on the disclosure of personal information obtained under the YOA. Records created under the YOA are **not** subject to the provisions of the FOIPPA or the CFCSA, as federal legislation supersedes provincial legislation in areas of federal jurisdiction. A copy of key sections of this statute is available in Appendix E.

The *Young Offenders Act* (Canada) does **allow** for the disclosure of information if the young person is being dealt with pursuant to a child protection matter as per the *Child, Family and Community Service Act*. Specifically, if information is being requested under s. 96 of the CFCSA, provisions exist under the YOA [s. 44(1)(h)] that allow the information to be disclosed. **It is important to note that the YOA does not allow either young offenders or their parents to consent to the disclosure of their personal information.**

D. Privacy Act

This **federal** legislation ensures protection of the privacy of individuals with respect to information about themselves that is held by **federal** government bodies. Service partners, including ministry staff, may, from time to time, need to request disclosure of personal information from a federal agency (for example, the RCMP) in order to perform their statutory duties.

The *Privacy Act* (Canada) governs the specific circumstances under which the federal agency **may** disclose the personal information. As with the FOIPPA, it is important to note that the Act **permits** disclosure; it does not **require** it. The federal agency would ensure that the party requesting the disclosure has the legal authority (usually through an agreement or an enactment) to access the personal information before making the disclosure.

E. Adoption Act

The *Adoption Act* provides for both the protection of personal information as well as the disclosure of personal information under specific and limited circumstances.

Personal information obtained under the *Adoption Act* **may** be shared:

- if there are compelling circumstances affecting anyone's health and safety, to a limited group of individuals (as outlined in s. 68 of the Act).
- if the disclosure is necessary to enable an adoption agency to exercise its duties, powers and functions under the Act

- under specific provisions of the Act that allow disclosure to an adopted person or a birth parent

The *Adoption Act* also gives the director the right to any information held by a public body (as defined by the FOIPPA) which is **necessary** to enable the director or an adoption agency to locate a person for the purposes of the Act, or is necessary for the health and safety of an adopted person. The Act **compels** public bodies who are asked for this information to provide it to the director, and states that this provision takes precedence over any other enactment.

VI. INFORMATION SHARING

A. Informed Consent

Whenever possible and appropriate, clients should be provided with the opportunity to provide their informed consent before their personal information is shared with anyone else. Consideration should be given as to whether seeking consent is appropriate, based on the merits of each individual case. Clients should also be made aware of those circumstances whereby this information might be shared without their consent if necessary.

Informed consent is given when the person the information is about is made aware of the specific information to be disclosed, has been informed of the new use to which the information will be put, understands the possible consequences of agreeing or refusing to the disclosure and then voluntarily gives consent. Typically, the consent should be in writing, and specify to whom personal information may be disclosed, how it may be used and should specify a time limit to the consent. Service partners, including ministry staff, must not penalize people for refusing to consent to the disclosure of their personal information by denying them the benefit or service for which their personal information was originally collected, or in any other way.

Some individuals may not be able to provide informed consent, either because they are of a very young age or due to an incapacity which prevents them from fully understanding the nature of their consent. Both the FOIPPA (s. 3 of the Regulations) and the CFCSA (s. 76 [2] and s. 24 of the Regulations) give direction as to who may act on behalf of these individuals. Service partners, including ministry staff, may also wish to refer to their program specific policy manuals, as some manuals address this issue.

It is important to note that the Young Offenders Act does not allow either young offenders or their parents to consent to the release of their personal information.

B. "Need To Know" Principle

It is recognized that, in order to provide services to clients, there may be times where it is **necessary** for service partners, including ministry staff, to share personal information regarding children and their families with each other or with other public bodies. Service partners, including ministry staff, need to exercise discretion in sharing information under these circumstances, and should only share information on a **"need to know"** basis.

"Need to know" means that **specific** information needs to be shared as it is **required** by the receiving body in order to fulfill its duties or obligations.

For example, a service partner, including ministry staff, providing family support services to parents may be working with a parent to strengthen his/her parenting skills. The parent may have demonstrated a lack of understanding of health issues related to child care, and has agreed to participate in a child - health program offered by another service partner. It may be necessary for the first service partner to share some specific personal information regarding the client and family with the second service partner in order that the second service partner could ensure the appropriate service is provided to the client. Only the specific information that is required in order to allow the service partner to provide the service should be shared. The first service partner may have additional information regarding the client that it would not be appropriate or necessary to share with the second service partner. Whenever possible and appropriate, the consent of the individuals the information is about will be obtained before sharing their information.

C. Information Sharing Within A Program Area

A fundamental principle when sharing information within a program area is that, whenever possible and appropriate, the consent of the individuals the information is about will be obtained before sharing their information. Consideration should be given as to whether seeking consent is appropriate, based on the merits of each individual case.

Typically, information that has been collected by a given program area can be shared within that program area in order to allow service partners, including ministry staff, to provide a given service. The information, whether provided in an oral or written form, should be shared on a "need to know" basis with the responsibility being on the person requesting the information to demonstrate the "need to know". In some situations, the person's position could result in the information sharing occurring without question, while in other situations some clarification may be required.

Service partners, including ministry staff, should keep the sharing of information as a formal process by being aware of where the disclosure takes place, who else may be present and by being aware of what information is being shared. For example, information should be shared in a private work space with only the required individuals present, rather than in the staff room in the presence of a number of other individuals.

When pro-actively sharing information, for reasons such as case conferencing, staff should be aware of what information is being shared and with whom. Consideration should be given towards ensuring that privacy is protected where ever possible. For example, if case conferencing is a regular part of full team meetings, consideration should be given towards not identifying the individual or family being conferenced, if possible, or to limit the conference discussion to specific team members who need to be involved.

For Ministry staff, consideration should also be given to the ministry's "Safety and Security Guidelines", which outline requirements with respect to the security of records and personal information.

D. Information Sharing Across Program Areas (With Other Service Partners)

A fundamental principle when sharing information across program areas (with other service partners, including ministry staff) is that, whenever possible and appropriate, the consent of the individuals the information is about will be obtained before sharing their information. Consideration should be given as to whether seeking consent is appropriate, based on the merits of each individual case.

By their nature, other service partners, including ministry staff, are working in partnership to provide services to clients. To this end, information may be shared with these service partners following the guidelines and principles outlined in the previous section. That is, within the legislative requirements, information can be shared with other service partners, including ministry staff, on a need to know basis as already outlined above.

When sharing information with other service partners, including ministry staff, we must ensure that the service partners are aware that they are subject to the same privacy (disclosure) rules.

Whether being asked to share information or determining that there is a need to do so, before sharing information with another program area, one should first ensure that there are no legislative restrictions prohibiting the sharing. In most situations, the FOIPP Act does allow information that has been collected by the Ministry to be shared internally, if **required** to carry out job functions.

However, some legislation, such as the CFCSA and YOA that would take precedence over the FOIPPA, places severe restrictions on the sharing of information. Further, some legislation gives certain staff the right of access to information upon their request. The most obvious example is s. 96 of the CFCSA, which gives the director- through guardianship or child protection social workers- a right to any information that is in the custody or control of the Ministry and is necessary to enable the director to exercise his or her powers or perform the duties or functions under the CFCSA. It is important that any legislative restrictions be known and followed when sharing information.

Once any legislative issues have been resolved, service partners, including ministry staff, should be aware of the nature and quantity of the information to be shared. To this end, guidance can be obtained from protocol agreements that may have been made between the involved program areas. A copy of one such agreement is contained in Appendix D for reference.

Typically, information should be shared following the "need to know" principle with the responsibility being on the requester to demonstrate this need; only information required to meet the need should be shared. It is important to note, however, that when a request is made under s. 96 of the CFCSA, case law has determined that the "director" determines what is "necessary", not the person being asked for the information.

When sharing information across program areas, the principles and guidelines outlined in section C, "Information sharing within a program" should also be considered.

E. Information Sharing With Clients

Typically, unless there are extenuating circumstances that prohibit it, such as health and safety or law enforcement matters, clients have a right to see any information a service partner, including the ministry, has about them. Given this, the "need to know" principle does not apply when considering sharing or responding to clients' requests to share information about themselves.

It is important to note that the above only relates to the clients' own information, as clients do not have an automatic right to the personal information of other family members' or third parties. In fact, special consideration must be given to ensuring that certain third party information, such as information that could reasonably be expected to reveal the identity of a person who has made a child protection report, is **not** shared with clients.

Typically, information is shared with clients for two reasons; the first being part of casework planning with the client and the second reason being as a result of clients requesting access to their information.

All issues involving the sharing of information with clients as part of case practice should be discussed within the service partner's program area for resolution. Issues or concerns that arise as a result of clients requesting information and which can not be resolved within the program area should be referred to the ministry's Information and Records Services Branch.

F. Information Sharing With Client's Family Members

A fundamental principle when sharing information with a client's family members is that, whenever possible and appropriate, the consent of the individual the information is about will be obtained before sharing his or her information. Consideration should be given as to whether seeking consent is appropriate, based on the merits of each individual case.

It is important to note that the YOA does not allow young offenders to consent to the release of their personal information, even to their parents. YOA records can be disclosed, under the limited circumstances specified in the legislation, to parents of a young offender.

While family members do not have an automatic right to each others' information, some information can be appropriately shared as part of case planning, including at family conferences, counseling or other similar sessions. The nature and content of such information sharing must be determined on a case by case basis.

However, when information is to be shared with family members for reasons other than case planning, typically as a result of the family members requesting the access, the legislative restrictions must be considered. The CFCSA, FOIPPA, and YOA all place restrictions on the sharing of information in such circumstances. Further, depending on the nature of the information, a given Act will take precedence over another. For example, if the information was collected under the CFCSA or YOA, the privacy requirements of those Acts will take precedence over those contained in the FOIPPA when considering the sharing of information with family members.

The relationship that the requesting family member has with the relative the information is about, and the reasons why the information sharing is being requested must also be considered. For example, both the FOIPPA and the CFCSA would allow a family member who has been legally appointed as "committee" for an individual to access that person's information if necessary to act on his/her behalf.

The parents' legal relationship with their child must also be reviewed when considering sharing the child's information with the parents, as whether or not they are the custodial parents could impact their right of access. The age of a child, the nature of the information and the Act under which the information was collected could all impact the ability of a service partner, including ministry staff, to share given information about a child.

For example, s. 76(2) of the CFCSA gives a person the right of access to a record containing information about a child who is under the age of 12 and in that persons' legal care. Thus, if the parent is requesting access to the personal information of a child over the age of 12, the child's consent is necessary simply because of the child's age. In contrast, if the information is subject to the FOIPPA (s. 3 of the Regulations), a parent is entitled to a minor child's information if the child is not considered capable of exercising their rights. Thus, the key determination is the child's capacity (not age).

All issues involving the sharing of information with family members as part of case practice should be discussed within the service partner's program area for resolution. Issues or concerns that arise as a result of family members requesting information and which can not be resolved within the program area should be referred to the ministry's Information and Records Services Branch.

G. Information Sharing With Government Officials & Officers of the Legislature

Some service partner's, including the ministry, routinely receive requests for information sharing from various government officials including the Children's Commissioner, Public Trustee, Ombudsman, and Information and Privacy Commissioner. Before sharing any personal information with these officials, service partners, including ministry staff, should confirm, within their program area, who is authorized to disclose the information. On occasion, service partners, including ministry staff, will also initiate the sharing of client information with these officials.

A fundamental principle when sharing information with these government officials is that, whenever possible and appropriate, the consent of the individuals the information is about will be obtained before sharing their information. Consideration should be given as to whether seeking consent is appropriate, based on the merits of each individual case.

When considering the sharing of information with these government officials, one should first consider any legislative requirements that would require or prohibit the sharing as discussed in section D, "Information sharing across programs". An additional consideration is that many of these government officials will have enabling legislation that compels the sharing (release or disclosure) of information to them upon request. It is the responsibility of the requesting government official to confirm that they have this authority.

After determining that it would be appropriate to share information with a given government official, service partners, including ministry staff, should use the "need to know" principle. However, in doing so, they should be aware that **some** officials have the right to request that **all** information relating to a given client be shared with them. Again, it is the responsibility of the requesting official to confirm the breadth of their legal authority in this regard.

When sharing information with these government officials, the principles and guidelines outlined in section D, "Information sharing across programs" should also be considered.

Service partners, including ministry staff, who have questions or concerns about the release of information to a given official should first consult within their program area and then consult with the ministry's Information and Records Services Branch, if required, to have the issues resolved.

H. Information Sharing In Integrated Service Delivery/Case Management

A fundamental principle when sharing information for integrated service delivery (ISD) and integrated case management (ICM) purposes is that, whenever possible and appropriate, the consent of the individuals the information is about will be obtained before sharing their information. Detailed information regarding ISD/ICM is available in the ministry's policy on Integrated Service Delivery and Integrated Case Management.

In both cases, service partners, including ministry staff, and - whenever possible - young people and their families, work together to coordinate plans or develop a single plan that will result in improved outcomes for the young person and the family. Thus, the sharing of information for the provision of integrated service delivery or integrated case management purposes is both appropriate and encouraged as outlined in the Ministry's approved Integrated Service Delivery and Integrated Case Management Policy.

When considering the sharing of information for ISD/ICM purposes, one should first consider any legislative restrictions as outlined in section D "Information sharing across programs" to ensure any restrictions are dealt with. Depending on the ongoing composition of the ISD/ICM team, this would not need to occur on a formal case by case basis, but only when a new position is added to the team.

Once it has been determined that information sharing is appropriate, the nature and content of the information sharing should be considered following the "need to now" principles. Only information required to ensure effective ISD/ICM should be shared.

The principles and guidelines contained in section C "Information sharing within a program" should also be reviewed when considering the sharing of information for ISD/ICM purposes.

I. Fair Information Practices Guidelines

British Columbia's first Information and Privacy Commissioner developed a list of Fair Information Practices to be followed by public bodies to ensure the protection of the privacy of individuals whose information is collected. These practices encompass a broad range of issues related to the collection, use and disclosure of personal information by public bodies.

The Ministry for Children and Families supports and complies with these guidelines; its own information practices are consistent with those developed by the Commissioner.

The list of Fair Information Practices is provided as Appendix A for the use of service partners, including ministry staff, and others who use this Guide.

VII. DISPUTE RESOLUTION

Where there is disagreement between service partners, including ministry staff, about whether or not to share information, attempts should initially be made to resolve the disagreement at a supervisory level. If this does not result in agreement, anyone involved in the dispute may choose to refer the case to the ministry's regional Quality Assurance Manager. The manager, both neutral and well-trained in privacy and information sharing issues, will provide advice and/or a recommendation within 5 working days - except in cases where there is a legitimate health and safety issue. Where there is deemed to be an issue of a health or safety nature, immediate response will be provided.

If the Quality Assurance Manager is unable to resolve the matter, the case can be referred to the Information and Records Services Branch for consultation and/or eventual direction from the Director, IRSB.

Where clients disagree with a decision to share or withhold information as part of ongoing case planning, they should go first to the involved local agency or ministry office, to discuss their concerns. Clients may follow either an informal or formal complaint process. Additional information may be found in the ministry's Complaints Process Handbook.

If the dispute relates to a possible breach of privacy issue, clients may also choose to make a complaint to the ministry's Information and Records Services Branch, who may investigate the complaint. In addition, clients also have the right to make a complaint directly to the Office of the Information and Privacy Commissioner. The Commissioner's Office may investigate and attempt to resolve complaints which relate to information and privacy issues, to make recommendations to the ministry with respect to the outcome of their investigation and ultimately has the authority to issue a ruling with respect to the complaint.

If a client has made a formal request for access to records and is not satisfied with the information disclosed by the Information and Records Services Branch, they have the right to request a review by the Information and Privacy Commissioner. Typically, the Commissioner's Office would review the records released to the applicant and either recommend the release of additional information or confirm the decisions made by the ministry. If the matter cannot be resolved through mediation, the Commissioner must conduct an inquiry and issue a ruling.

APPENDIX A

FAIR INFORMATION PRACTICES

The Ministry for Children and Families supports and complies with the following fair information practices:

1. Data collection by an agency of government should be explicitly authorized by law, with a responsible keeper for that information.
2. Personal information, when collected, should relate to, and be necessary for, an operating program or activity of the agency.
3. With limited exceptions, an agency collecting personal information should tell the data subject the purpose for collecting the information, the legal authority for collecting it, and provide detailed information as to who can answer any questions the person may have about the information collection.
4. Personal information should be collected directly from the person concerned, unless another method of collection is authorized by the person, or by law. The data subject should be provided with the information that will make informed consent possible and meaningful.
5. The existence of government data banks should be known; there should be no secret data banks.
6. Personal information collected and maintained should be as accurate as possible.
7. An individual should have complete and unrestricted access to his or her personal information held by government (subject to limited exceptions) and be entitled to request correction of any information about him or her.
8. Personal information should be used for the purpose for which it was collected, or for a reason consistent with the purpose of collection. It may be used for other purposes, if the subject of the information consents.
9. Personal information may be disclosed by a government agency only as authorized by the data subject, by law, or to a law enforcement agency for a law enforcement purpose.
10. Individuals have the right to be forgotten; personal information should be kept only as long as needed for legitimate purpose of the data collector and then destroyed or archived.
11. Reasonable security arrangements must be in place to protect all personal information from unauthorized collection, access and disclosure.

Source: Derived from David H. Flaherty (1989) Protecting privacy in a surveillance society page 300

APPENDIX B

DEFINITIONS

CONSISTENT USE AND PURPOSE

A use of personal information that is **directly related** to the original use and that is **necessary** to performing the statutory duties or operating a legally authorized program of the public body.

CUSTODY AND/OR CONTROL

Custody refers to who has **physical possession** of the information, while control means the **authority to manage and make decisions** about the use of the information. In some cases, a service partner may have custody of the personal information, but the information remains under the ministry's control.

INTEGRATED CASE MANAGEMENT

This term is used when the client has complex and often longer term needs that require a formal and structured approach among service providers. This necessitates joint decision-making, development, implementation and monitoring of a single service plan and the clarification of their multiple roles and responsibilities.

INTEGRATED SERVICE DELIVERY

This term is used when the identified needs are such that a single service or limited number of services are required and in many instances the needs are short term. The service provider who works with the client will consult and may meet with other providers who either inform the plan or are a part of the plan in the development and on-going monitoring of the service plan for the client, who will also be involved in this process

INFORMATION AND RECORDS SERVICES BRANCH

The branch of the Ministry for Children and Families responsible for the administration of information and privacy issues related to the *Freedom of Information and Protection of Privacy Act* and the *Child, Family and Community Service Act*. The branch processes formal requests for access to information for the MCF, responds to some correction requests and

investigates complaints related to privacy issues. The branch also provides consultation to service partners, including ministry staff regarding privacy and access issues.

Contact address: Information and Records Services Branch
PO BOX 9702 STN PROV GOVT,
Victoria, B.C. V8W 9S1
Telephone: (250) 387-0820 Fax: (250) 387-0817

INFORMATION AND PRIVACY COMMISSIONER

The Commissioner is an independent Officer of the Legislature, whose role is to review any aspect of a public body's response to requests made under the FOIPPA or the CFCSA, and to investigate complaints regarding the collection, use and disclosure of personal information. The Commissioner has the authority to issue binding orders to public bodies with respect to any provision of the FOIPPA and certain provisions of the CFCSA.

Contact address: Information and Privacy Commissioner
4th Floor, 1675 Douglas Street
Victoria, B.C. V8V 1X4
Telephone: (250) 387-5629 Fax: (250) 387-1696

PERSONAL INFORMATION

As defined in the FOIPP Act, personal information means recorded information about an identifiable individual, including:

- (a) the individual's name, address, or telephone number,
- (b) the individual's race, national or ethnic origin, color, or religious or political beliefs or associations,
- (c) the individual's age, sex, sexual orientation, marital status or family status,
- (d) an identifying number, symbol or other particular assigned to the individual,
- (e) the individual's fingerprints, blood type or inheritable characteristics,
- (f) information about the individual's health care history, including a physical or mental disability,
- (g) information about the individual's educational, financial, criminal or employment history,
- (h) anyone else's opinions about the individual, and
- (i) the individual's personal views or opinions, except if they are about someone else

RECORD

As defined in the FOIPP Act, a record includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other things on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records.

SERVICE PARTNERS

Refers to a wide group of individuals , both internal and external to the ministry, working in partnership to provide services to clients and their families. These service partners include, but are not limited to, social workers, public health nurses, alcohol and drug counselors, mental health clinicians, family support workers, youth justice workers, First Nations and Aboriginal communities, doctors, child care providers, group home operators and foster parents.

APPENDIX C

SCENARIOS WITH ANALYSIS

The following questions and answers are intended to begin a discussion of some of the information sharing issues service partners, including ministry staff, may face. This is a complex and emerging area and there are few simple rules. Rather, each situation must be viewed on its own merits and examined from the perspective of the governing legislation, relevant policy and best practices guidelines. If service partners, including ministry staff, are unsure about an issue relating to information and disclosure, they should ask their supervisor or manager for advice. Further assistance is available from the Regional Operations Division for program related issues and from the Information and Records Services Branch for questions that relate to privacy and disclosure issues.

My work with substance addicted adults is based on principles of mutual trust and confidentiality. Will intimate details they tell me in confidence make their way into the child protection social worker's file?

In general, the client's consent should always be obtained before disclosing information outside of a *Child, Family and Community Service Act (CFCSA)* s. 96 request or other lawful request such as through a summons, subpoena or court required testimony. You should always advise clients that their right to privacy is limited by a child's right to protection from harm. You have an absolute duty to report any concern that a child is in need of protection and have a responsibility to provide the social worker with information necessary for the social worker to carry out duties under the *CFCSA*.

The social worker making a request under s. 96 has the right to information in the alcohol and drug service file, but only to the extent that such information is necessary for carrying out the social worker's duties under the Act. This precludes a general fishing expedition, but not a look at anything that is in the file as long as the social worker can provide a clear explanation of why the information is needed.

It is the social worker's job to provide a clear explanation and to decide which information is relevant. It is also not necessary in all cases for written material to be provided, in some cases a verbal report will suffice. Each situation must be viewed individually. Thus, the rules in one case will not necessarily apply in another.

You can assure your clients that the Ministry for Children and Families strives for an integrated approach to client service - while we have a number of highly specialized services, we attempt to work together to provide a service that will best meet the needs of clients and their families.

I am a youth probation officer. The Young Offenders Act (YOA) contains a pretty stiff prohibition on the release of information. What does this mean for me and my role in disclosing information to other Ministry staff?

The YOA does contain its own rules relating to information and disclosure. Within the boundaries of those rules, there is considerable discretion given to youth probation officers concerning information sharing. However, disclosure of information by a youth probation officer is always governed by the limits of the legislation. The "need to know" principle must also operate within the authority of the YOA..

While care must be taken before information about young offenders is shared with others, the YOA actually provides considerable scope to share information with other helping professionals and service partners. For example, s. 14 (9) permits the sharing of a pre-disposition report with "any person... under whose supervision the young person is placed or to any other person who is directly assisting in the care and treatment of the young person". Amendments to s. 38 (1.13) permit the disclosure of information to "any professional or other person engaged in the supervision or care of a young person (including schools) ... where the disclosure is necessary to ensure the safety of staff, students or other persons as the case may be" or to ensure compliance with a court order.

Section 44.1 of the *Act* permits the disclosure of records to "any member of a department or agency of a government in Canada, or any agent thereof engaged in the administration of alternative measures or engaged in the supervision or care of the young person or in the administration of a disposition".

Further, a B.C. Order in Council (2102/86) made pursuant to s. 44.1 (1)(h) of the Young Offenders Act authorizes the release of records to "an officer or employee of a provincial ministry, or agent of the Crown having statutory functions or duties relating to the employment, education, health welfare or any other matter relating to young persons, but only in relation to the exercise of those functions or duties".

In short, the YOA addresses and supports the kind of inter-disciplinary and collaborative approaches that the Ministry has underway. There are, however, many complex areas and questions relating to this Federal legislation. The Youth Justice Team, Policy Division is available for consultation and advice on these issues.

Many of my clients are children and youth, don't they have a right to privacy, too?

Yes, children and youth have the same rights as adults to privacy and confidentiality. In the same way, these rights may be circumscribed by the person's own need for protection, or the need to protect others. It is expected that service partners, including ministry staff, from all program areas will work together to provide an integrated and coordinated service to children and youth. Where separate service streams are

necessary, each worker must be clear about the services to be provided, the network of service partners involved and the manner in which information is to be shared. Whenever possible and appropriate, children and youth should be involved in service planning meetings so that they can see first-hand how their personal information is being used.

Age of consent is not as critical as is the capacity to provide informed consent. As a matter of practice, it is always best to advise children and youth in advance of the limits to confidentiality and the reasons why it might be necessary to disclose information to another employee of the Ministry or to another agency.

I do not work in child protection and have made commitments to my clients about confidentiality. How do I explain to them that their files are now kept in the same room as child protection files and are accessible to the child protection workers?

Unless there is a valid reason for doing so, no service partner, including ministry staff, should be looking at another service partner's files. If the child protection social worker needs to know information on the client's file, a request should be made as described previously. Our clients need to know that a number of services have joined together to form the Ministry and that child protection is not our only service. Where a potential protection concern exists, however, service partners, including ministry staff, are obligated to report their concerns.

What does "need to know" really mean?

Need to know is a term that has to be understood in both a general sense and in a manner that is specific to the circumstances of each situation. In general, the term means that the information is required in order to enable the recipient to carry out a function or perform a duty. The information is integral to the performance of that duty and can reasonably be considered to be a necessary element in providing a complete service. There is a difference between "need to know" and "nice to know". That is, there may be a great deal of information available concerning a family, not all of which is relevant to the person seeking information. A duty falls on the person making the request to differentiate between that information that is essential to the issues at hand and the information that is really superfluous to the central issue.

For example, while the alcohol and drug service counselor may need to know the medications prescribed by a psychiatrist from a mental health center for a client, the counselor probably doesn't need to know the details of the client's prior hospitalizations (except as they might relate to alcohol or drug misuse).

The essential point to remember about information sharing is that collaborative planning, shared decision making (often involving the client) and a multidisciplinary approach will

all enhance service effectiveness and the quality of service our clients receive. Every client situation is unique, and there is no single "one size fits all" approach to apply.

How can I know what another service partner "needs to know" if I do not do their job and do not understand their mandate?

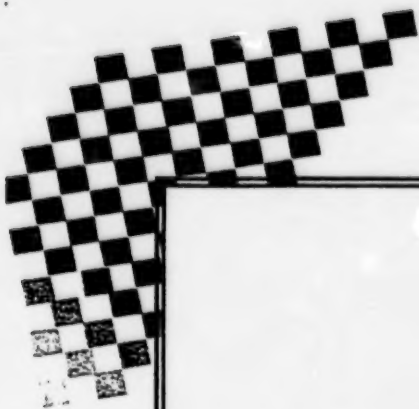
It is very important to have a sense of the work performed by other service partners, in the Ministry. To that end, many regions are conducting or planning cross-program training programs to ensure that all staff have an understanding of common terms, mandates, tools and programs. If you are unsure about the mandate, reason for service or specific information request of another service partner, you should clarify those questions prior to providing any information. The person requesting the information needs to be clear and specific about what kind of information they require, and the person responding to the request needs to determine what information meets this criteria, and what information is superfluous to it. An exception to this would be a request for information being made by the director under s. 96 of the CFCSA.

This all sounds a bit confusing and difficult to explain to my clients. Will the Ministry be producing some material to give to clients?

Yes, several divisions collaborated on the development of an information brochure on confidentiality and disclosure. These are available for ministry staff to distribute to clients. If your office does not have these brochures, contact your regional office.

APPENDIX D

PROTOCOL AGREEMENT



Protocol Framework and Working Guidelines

Between Child Protection and Addiction Services



DECEMBER 1999



**ADDICTION SERVICES
CHILD PROTECTION SERVICES
MINISTRY FOR CHILDREN AND FAMILIES**

Table of Contents

OVERVIEW	2
PREAMBLE	2
GUIDING PRINCIPLES	2
CPS LEGISLATIVE PRINCIPLES.....	2
MISSION STATEMENT FOR ADDICTION SERVICES	3
A. RELATED PHILOSOPHIES AND THEORIES.....	3
HOW IS HARM REDUCTION VIEWED IN BOTH SERVICES?	3
DO BOTH SERVICES TAKE A BIOPSYCHOSOCIAL-SPIRITUAL APPROACH?	4
HOW DOES EACH SERVICE RECOGNIZE CHANGE?.....	4
B. INFORMATION SHARING (BC HANDBOOK FOR ACTION ON CHILD ABUSE AND NEGLECT, PAGES 56-58).....	5
LEGAL FRAMEWORK.....	5
POLICY DIRECTION.....	6
C. DUTY TO REPORT (BC HANDBOOK FOR ACTION ON CHILD ABUSE AND NEGLECT, PAGES 17-19)	6
RESPONSIBILITIES OF ADDICTION SERVICES IN REPORTING CHILD PROTECTION CONCERNS	7
RESPONSIBILITIES OF CHILD PROTECTION IN RESPONDING TO REPORTS FROM ADDICTION SERVICES	7
D. REFERRING CHILD PROTECTION CLIENTS TO ADDICTION SERVICES FOR ASSESSMENT	8
RESPONSIBILITY OF CHILD PROTECTION IN REFERRAL TO ADDICTION SERVICES.....	8
ADDICTION SERVICES ASSESSMENTS.....	9
ROLE OF ADDICTIONS COUNSELLOR IN PROTECTION MATTERS	9
DRUG SCREENING.....	9
E. INTEGRATED CASE MANAGEMENT.....	10
CASE MANAGEMENT.....	10
CASE MANAGEMENT PROCESS	10
GENERAL COMMENTS.....	11
TABLE OF APPENDICES	12
RISK ASSESSMENT FLOW CHART	13
PRACTICE STANDARDS FOR CHILD PROTECTION	14
THE ADDICTION SERVICES SYSTEM OF CARE	15
ALCOHOL AND DRUG SERVICES - SYSTEM OF CARE	17
TRANSTHEORETICAL MODEL OF CHANGE	18
APPENDIX 1-A.....	13
APPENDIX 1-B	14
APPENDIX 2-A.....	15
APPENDIX 2-B	17
APPENDIX 3.....	18



PROTOCOL FRAMEWORK and WORKING GUIDELINES BETWEEN CHILD PROTECTION AND ALCOHOL AND DRUG SERVICES

OVERVIEW

This protocol is intended to clarify the respective roles and support the working relationship between outpatient addiction staff and child protection staff who deliver child protection services under the Child, Family and Community Service Act. It does not cover case management respecting youth or non-protection clients, although local protocols for such shared areas are recommended.

PREAMBLE

Substance misuse is a significant variable in a number of harms to children including but not limited to: Sudden Infant Death Syndrome; pre-natal harm resulting in Fetal Alcohol Syndrome or Effects or Neonatal Abstinence Syndrome (FAS, FAE and NAS); emotional abuse and neglect, physical abuse and family violence.

Substance misuse is present as an identified risk factor in a large percentage of families receiving child protection services (CPS) in British Columbia. A corollary to this is the significant number of clients of Addiction Services, formerly Alcohol and Drug Services, (ADS) that have past or current issues related to child abuse and neglect.

This protocol seeks to identify common interests and areas of shared responsibility, with a focus on information sharing, in order to better serve mutual clients.

GUIDING PRINCIPLES

CPS LEGISLATIVE PRINCIPLES

These principles are based on and represent some of the "Guiding Principles" of the CF & CS Act, as set out in section 2 of the Act.

- The safety and well-being of children are the paramount consideration
- Children are entitled to be protected from abuse, neglect and harm or threat of harm
- A family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents

- Preference is for services to support families in fulfilling their parenting responsibilities
- Decisions affecting children must be made and implemented in a timely manner

The BC Handbook for Action on Child Abuse and Neglect is a provincial approach to preventing child abuse and neglect that aims to "ensure that service providers are aware of how they are accountable for their responses to child abuse and neglect". "Ensuring the safety and well-being of children requires us to:

- put children's needs first
- work together; and
- be accountable for our actions."

MISSION STATEMENT FOR ADDICTION SERVICES

"To achieve a healthier society by reducing the misuse of alcohol and all other drugs." Expected outcomes include:

- decreased substance misuse
- improved health (physical and psychological)
- improved vocational and educational functioning
- improved family and social functioning
- reduced involvement with the criminal justice system

A. RELATED PHILOSOPHIES AND THEORIES

How is harm reduction viewed in both services?

Addiction Services

A harm reduction model acknowledges that there are various levels of risk associated with alcohol and other drug use and that movement towards healthier lifestyles or reducing the risk-associated use, is a valid choice that should be supported.

Child Protection Services

The reduction of the likelihood of harm to a child is the cornerstone of the BC Risk Assessment Model. The many ways in which substance misuse harms children requires commitment to parent-client goals which reduce risk to their substance affected dependent children.

Do both services take a biopsychosocial-spiritual approach?

Addiction Services

The Biopsychosocial-spiritual theory of addiction suggests that substance misuse is the net result of complex interactions amongst a combination of biological, psychological, social and spiritual determinants. Effective treatment must address each of these areas.

Child Protection Services

CPS is grounded in social work values that consider the well being of clients in relation to a similar complex of determinants with emphasis on the family and community systems that support client choices and behaviour. The BC Child Protection Risk Assessment Model explores a number of areas of influence and attempts to provide strategic interventions to increase the family's strengths and capacities and reduce harmful influences. (See Appendices 1-A and 1-B)

How does each service recognize change?

Addiction Services

This Transtheoretical Model of change identifies six stages which people go through when making a major behavioural change. Work with a counsellor or other supportive relationship can happen at any stage. This theory is particularly helpful when working with people for whom significant others have identified an issue with alcohol and other drugs but who do not see an issue themselves. It supports the concept of matching approach and treatment modality with individual client readiness.

(See Appendix 3)

Child Protection Services

BC legislation and policy contains provisions for families to access services and support to improve their parenting when protection needs are identified. When children are in protective care, time limits are built into legislation to safeguard children whose needs must be met *in a timely fashion*. Thus, access to effective services to support change is critical.

B. INFORMATION SHARING

(BC Handbook for Action on Child Abuse and Neglect, pages 56-58)

Legal Framework

Section 96 of the CF & CS Act empowers duly delegated CPS social workers to any information that is in the custody or control of a public body* and is necessary to enable a delegated CPS social worker to exercise his or her powers or perform the duties or functions under the CF&CS Act.

**For those agencies providing Addiction Services through private agencies, the agency is not determined to be a "public body" under the Freedom of Information and Protection of Privacy Act (FOIPPA). However, as service partners in the delivery of government sponsored continuum of care, similar disclosure procedures for private agencies are created through service contracts with the Ministry for Children and Families.*

A 1998 legal precedent on section 96 of the CF & CS Act* clarifies that it is the responsibility of the CPS worker to determine what information is necessary, not the holder of the information.

** Contact the Child Protection Division for further information on this legal precedent.*

A child protection social worker has the right to any information that is necessary to enable a child protection social worker to exercise his/her powers or perform the duties or functions under the CFCSA. The CPS worker should identify what type of information is necessary for him/her to perform the duties or functions under the CFCS Act. Examples of when a child protection social worker may request information include, but are not limited to circumstance where a child protection social worker is:

- assessing a report about a child's need for protection
- deciding if a child needs protection
- completing a comprehensive risk assessment
- developing a risk reduction service plan
- reassessing the level of risk to a child

See Appendix 1-A for the Risk Assessment and Case Management Flow Chart. See Appendix 1-B for the 5 areas of influence and the 23 risk factors a child protection social worker must consider when completing a comprehensive risk assessment (risk decision #5) in a child protection case. Also refer to "MCF Practice Guidelines for Monitoring Substance Misuse in Supervision Orders" (available soon from the Child Protection Division) for other factors a social worker may consider when monitoring parental substance misuse under a supervision order

In order to protect the Addiction Services agency in the event of an allegation of a breach of confidentiality, all requests for disclosure of confidential information without client consent should be in writing and accompanied by a copy of the social worker's letter of delegation under Section 96. Addiction Services policy ensures clients are informed of the reporting and disclosure obligations of all Addiction Services staff as part of the client orientation to the system of care.

Policy Direction

Both Child Protection and Addiction Services' policies support maximum client involvement in service planning. Wherever possible, client consent to information sharing should be obtained and in writing.

C. DUTY TO REPORT

**(BC Handbook for Action on Child Abuse and Neglect,
pages 17-19)**

Section 14 of the CF & CS Act requires that,

A person who has reason to believe that a child (a) has been, or is likely to be, physically harmed, sexually abused or sexually exploited by a parent or other person, or (b) needs protection under Section 13 (1) (e) to (k), must promptly report the matter to a director or a person designated by a director.

Addiction Services counsellors work with a vulnerable population, many of whom were themselves victims of childhood abuse. Disclosure of reportable situations is an anticipated feature of the counselling relationship and might include historical or present day concerns.

With historical disclosures, it is important to note that an adult abused as a child may be in a position to know if their abuser could be abusing other children. Where there is reason to believe this is happening, there is a legal duty to report the possibility to a child protection social worker.

Current concerns within the family can arise from intended and unintended disclosures of risk. The substance misusing parent, or substance affected partner/child/youth, could give the Addiction Services counsellor reason to believe a child has been or is likely to be harmed.

The unique circumstance of the situation, including the relationship of the counsellor and client will determine how the Addiction Services counsellor's duty to report will be managed. While self-reporting may be an option, the ADS counsellor must still report promptly and directly to a child protection social worker. Where an ADS counsellor has reason to believe a child needs protection, and the client will be making a self-report, it is acceptable for them to report by way of a joint conference call to a child protection social worker.

Responsibilities of Addiction Services Workers in Reporting Child Protection Concerns

- Discussing the limits of confidentiality with clients prior to service;
- Actively consider the possibility of child protection concerns when assessing clients who are parents;
- Consulting with the local CPS supervisor or designate whenever any doubt exists about the need to report a particular circumstance;
- Knowing who to contact in one's local community and reporting any situation where there is reason to believe a child has been, or is likely to be, harmed to CPS;
- Supporting clients to self report by way of a joint conference call to a CPS worker
- Maintain familiarity with the Risk Assessment Model for Child Protection in BC;
- Participating in follow up and service planning with the CPS worker.
- Recognizing and respecting the CPS worker's delegated responsibility to protect children
- Making child protection reports to a CPS worker in a timely fashion

Responsibilities of Child Protection Workers in Responding to Reports from Addiction Services

- Recognizing and respecting the foundation of trust in the relationship between the Addiction Services counsellor and their client and the strain on that relationship when reporting or non consensual information sharing is required;
- Reporting back to the Addiction Services reporter on the results of the investigation;
- Advising if the investigation is closed and no further action to be taken at this time;
- Confirming the assignment of an ongoing CPS social worker and clarification of roles in future case management partnerships.

D. REFERRING CHILD PROTECTION CLIENTS TO ADDICTION SERVICES FOR ASSESSMENT

Often the Child Protection Services client is known to be substance misusing but the extent of the problem and the best means to resolve it and reduce the harm to both the adult client and the involved child/ren is not known. With the agreement of the Child Protection Services client, a referral is made to the Addiction Services system of care for assessment.

In practice, many of these clients may be in the pre-contemplative stage and as such may present special challenges for the addictions specialists. As well, most Addiction Services outpatient clinics have wait-lists for their services and may not be able to provide an immediate assessment for child protection purposes. Where waitlists exist for services, the Child Protection Social Worker may wish to contact the Addiction Services worker in order to develop an interim plan for services.

Responsibility of Child Protection Workers in Referring Clients to Addiction Services

- To be familiar with the Addiction Services System of Care
(See Appendices 2-A and 2-B) and local referral procedures;
- To become familiar with the model of change and motivational interviewing techniques that ADS workers use with substance misusing clients;
- To be clear about the purpose of the referral (e.g., assessment or consultation) and clarify the information the child protection social worker expects to receive from the Addiction Services worker;
- To ensure the client understands the purpose of the referral;
- If a CPS worker is referring a client to Addiction Services, the CPS worker will obtain client consent for release of confidential information to and from Addiction Services;
 - If the client consents to release information to Addiction Services, the CPS worker will share relevant known information with Addiction Services to assist in the assessment;
 - If the client does not consent to disclose information to Addiction Services, the CPS worker may disclose information to Addiction Services subject to section 79 (a) of the CF &CS Act.

Addiction Services Assessments

The local outpatient clinic staff depend on relationship building in their assessment of client needs and development of a therapeutic alliance. In a typical assessment of one to three hours, based primarily on the client's self report, the Addiction Services counsellor will typically be able to identify the following, and release this information to a child protection social worker either with the client's consent, or subject to section 96 of the CF & CS Act:

- current and historical substance misuse patterns
- consequences on the five domains (health, vocational etc.)
- family and social history
- strengths and supports
- mutually formulated change goals
- summary and recommendations

Role of Addictions Counsellor in Protection Matters

At present, neither the Addiction Services system nor the Child Protection Services system alone can easily or adequately assess the substance misusing parents' parental capacity. This is not a widely developed area of expertise, although specialists are emerging. While the Addiction Services counsellor has a primary objective to improve the client's family and social functioning, it is not the responsibility of the Addiction Services counsellor to make complete parental capacity assessments. Rather, it is the Addiction Services worker's responsibility to help inform the CPS worker of the client's known family and social functioning.

Drug Screening

As a method of monitoring client abstinence, the use of drug screening through urinalysis, hair follicle analysis etc. is sometimes recommended. This is a controversial area with divided opinions as to both evidentiary and treatment support values. Within the context of a harm reduction approach, such as controlled drinking strategies for some clients, the utility of drug screening may be questioned.

Drug screening is not a service performed by outpatient Addiction Services and should only be carried out by qualified practitioners. Where Addiction Services and Child Protection Services have a mutual client being drug screened, the results of drug screening should be shared in accordance with the legal authority for doing so, and should be included in the integrated case management plan (next section).

Wait-lists

The ADS system of care, (appendix 3), has established provincial priorities which include immediate health risk to an unborn child, youth, or adult. Decisions regarding placement on the waitlist is made by Addiction Services workers on established criteria. It is the responsibility of each region to address resource allocation issues related to the assessment and treatment of substance affected parents involved with CPS. Local solutions and protocols must be established to ensure the rights and needs of substance affected children are also addressed and met.

E. INTEGRATED CASE MANAGEMENT

Once it is recognized that Child Protection and Addiction Services have a mutual client, it is important that the general principles of collaborative case management be followed.

More thoroughly articulated in the ministry's draft of Integrated Service Delivery and Integrated Case Management: A Best Practice Manual, these principles include commitment to joint planning, development, implementation and monitoring of a single service plan and clarification of respective roles and responsibilities.

Case Management

The investigating social worker in many communities will not be the same social worker as the ongoing family service worker and thus not involved in longer-term case management. Where there is an ongoing protective family service worker, the statutory responsibilities of that worker dictate that the CPS worker be the primary case manager.

Where ongoing Addiction Services involvement is part of a 'Risk Reduction Service Plan', the Addiction Services worker should always be involved in establishing the type of addiction treatment and goals. In non-protection files, (more frequently involving youth), primary case manager responsibilities need to be established by the integrated case management team which may consist of a number of professionals and family members.

Case management process

Integrated case management principles are available in a variety of documents. In Child Protection/Addiction Services shared case management workers should develop:

- a defined process for ongoing information sharing within appropriate legal parameters
- involvement of the client in referral, planning and reviews

- in accordance with legal authority, a commitment to communicate significant events such as:
 - ◊ movement of the client within the addiction system of care
 - ◊ change of household or household members
 - ◊ agreed developments such as relapse, missed appointments
 - ◊ case transfer
 - ◊ legal events changing the status of the client family
- an understanding of roles in regard to substance affected clients, such as children (in and out of care) and spouses, (e.g. who will be included in counselling?)
- identification of support services available in both systems to enable the client to meet set goals.

General Comments

Moving the shared goal, of better functioning families, forward requires a strong commitment to the following:

- improved understanding of the Addiction Counsellor and Child Protection Social Worker roles
- development of provincial, regional and local strategies
- joint training
- joint advocacy on behalf of clients
- mutual respect and good will
- ongoing communication
- relationship building, and
- collaborative partnership.

Our ethical commitment and accountability to the well being of our children and communities asks no less.

Table of Appendices

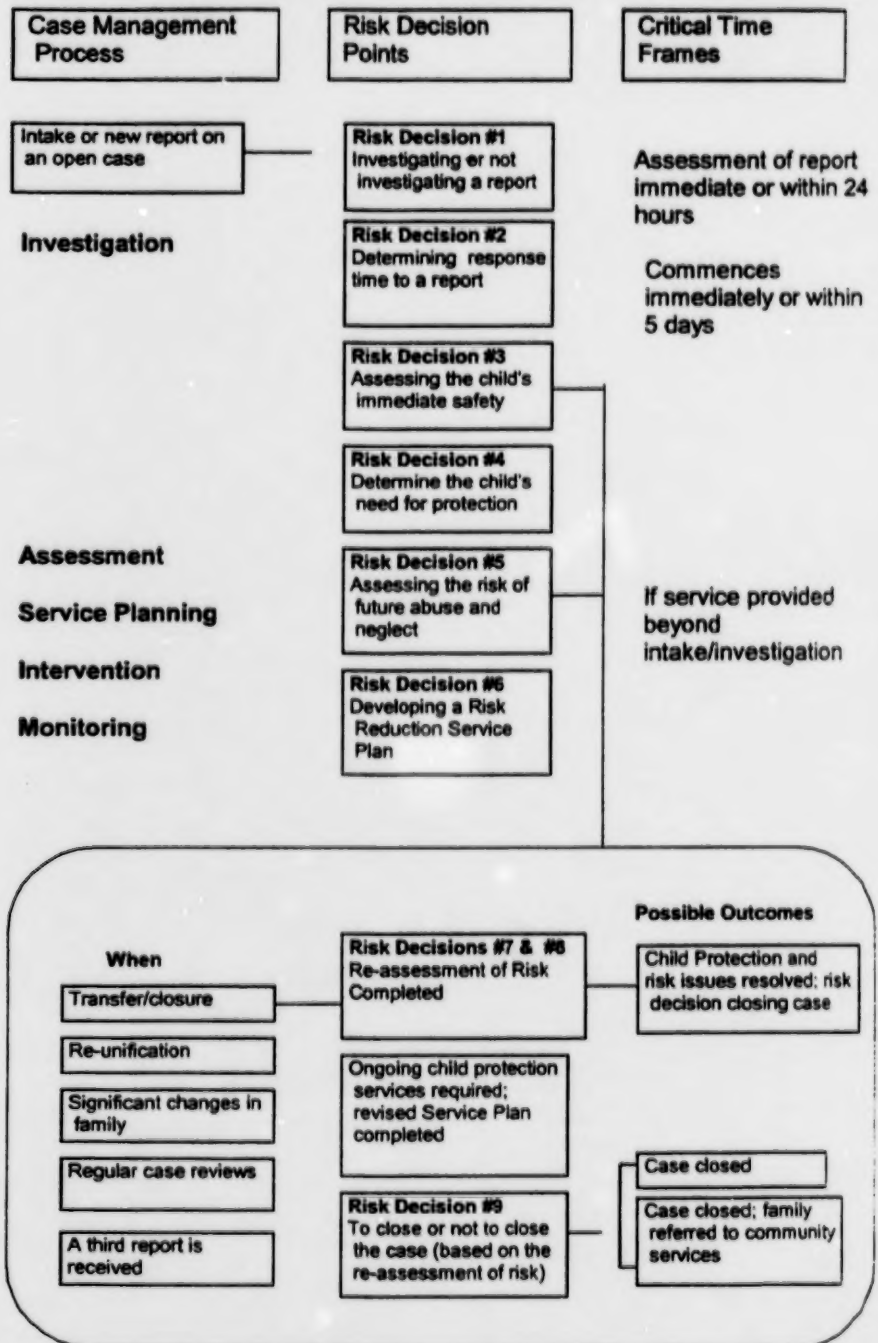
1. A - The Risk Assessment and Case Management Flow Chart:
Reference from the Risk Assessment Model for Child Protection in British Columbia, showing steps of case management, the risk decision points and the critical time frames in assessing risk to a child in a comprehensive risk assessment.
1. B - Quick Reference: Risk Factors
Excerpt from the Practice Standards for Child Protection, highlighting the risk factors in 5 crucial areas of influence in a child's life
2. A - ADS System of Care
A description of each service delivery component found in the Addiction Services system of Care.
2. B - Client Referral Pathways in the System of Care
Schematic demonstrating the flow of clients through the components of addiction treatment
3. Stages of Change
A diagram and brief description of the Trans-theoretical model of change developed by Prochaska and Diclimente and utilized in clinical work in ADS

Risk Assessment and Case Management Flow Chart

Addictions Counsellors may have a role at various points during the risk assessment process.

Consider:

- Contacting the Child Protection Consultant in your region for further information on the Risk Assessment Model in BC.
- To become more familiar with the Risk Assessment Model, Addictions Counsellors may wish to attend risk assessment training for non-protection staff



Risk Assessment Model for Child Protection in British Columbia

Quick Reference : Risk Factors

Parental Influence	Child's Influence	Family Influence	Abuse/Neglect Influence	Intervention Influence
<ul style="list-style-type: none"> • Abuse/Neglect of parent as a child • Alcohol or drug use • Expectations of child • Acceptance of child • Physical ability to care for child • Mental/emotional ability to care for child • Developmental ability to care for child 	<ul style="list-style-type: none"> • Child's vulnerability • Child's response to parent • Child's behaviour • Child's mental health and development • Child's physical health and development 	<ul style="list-style-type: none"> • Family Violence • Ability to cope with stress • Availability of social supports • Living conditions • Family identity and interactions 	<ul style="list-style-type: none"> • Severity of abuse/neglect • Access to child by person who has abused or neglected or may abuse/neglect a child • Intent and acknowledgement of responsibility • History of abuse/neglect committed by present parents 	<ul style="list-style-type: none"> • Parent's response to identified needs • Parents co-operation with interview

When it has been determined that a child needs protection, a child protection social worker must consider all 5 influence categories and 23 risk factors when completing the comprehensive risk assessment (Risk Decision #5) the criteria identifies likelihood of risk to a child. The social worker and others involved with the child and family then develop the Risk Reduction Service Plan to reduce the identified risk

Outpatient Treatment:

All persons seeking treatment from the addictions system of care require a thorough and professional assessment of their substance misuse, problem gambling, and related problems, as well as an assessment of the strengths that can help to build their recovery. Based upon the assessment, a service plan is developed with the client, matching the person's need to available resources. If indicated by the assessment, services may involve formal referral to another component of the Addictions Services system of care, or another health or social service agency. Outpatient treatment staff have the case management responsibility for arranging these referrals. The initial assessment is followed by monitoring and interim adjustments to the plan. Assessment, referral, and case management services are incorporated into general outpatient programs. Some programs also provide outreach services; where counselling is provided in a location convenient for the person seeking help.

Counselling, support, and education are provided to persons attempting to change their own misuse of substances or problems with gambling activity, as well as related problems in areas such as family relations, work, legal, and physical and emotional health areas. A variety of professional and peer counsellors working in an outpatient program provide these services. In some cases, the person making first contact (and remaining active throughout) is someone other than the person experiencing problems with their own substance misuse or gambling problem. This first contact may be a care-giving family member or other person who is affected by or concerned about the substance misuse or gambling problem of another person.

Day Treatment:

For those whose substance use has been very harmful, more intensive treatment may be part of the case-managed treatment plan. This means therapeutic work during the day, evening and/or weekend sessions over a period of weeks. Close monitoring and support deal with the traumatic effects of experiences such as past abuse and guilt over harm done through substance misuse, as well as helping the client to initiate major changes in lifestyle. People who undertake intensive treatment in non-residential settings are those who have stable living arrangements, may have supportive employment, support of friends, family and who are not subjected to overwhelming pressures, problems and inducements to resume substance misuse.

Intensive Residential Treatment:

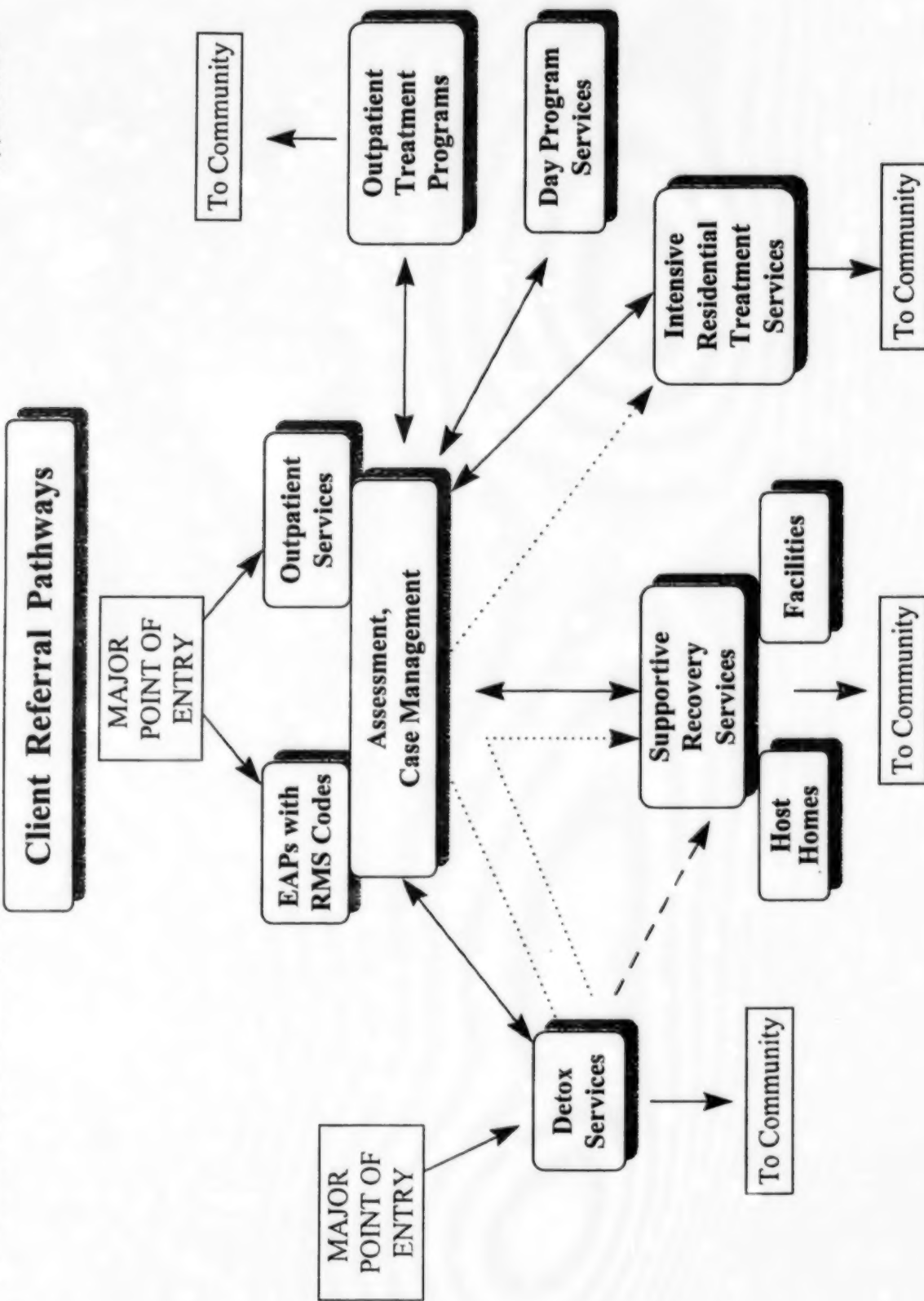
Some people may require a safe living environment, free of alcohol and illicit drugs, while undertaking intensive, short term therapeutic work. Such clients usually have unstable living arrangements and lack the support of family, friends, and employment; or pressures, problems, and inducements to resume substance misuse may overwhelm them.

Supportive Recovery Services:

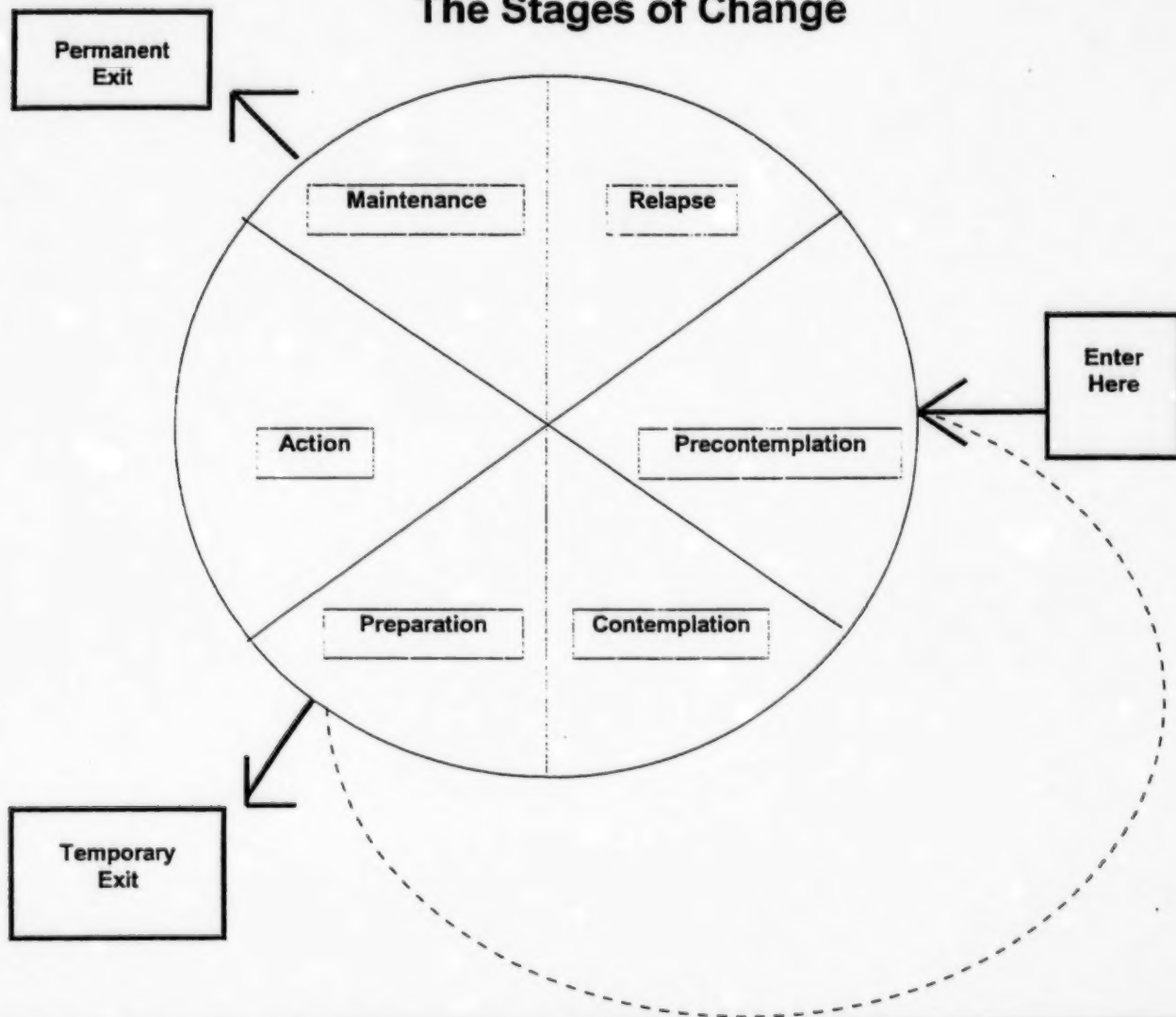
Clients may require safe, structured living arrangements, which are free of alcohol and illicit drugs, at several times in the course of their recovery; after detoxification and while awaiting residential treatment; after intensive treatment while reintegrating into the community; and during crises where there is a high risk of relapse. Supportive recovery provides, most importantly, a safe living environment. The program may also require residents to become involved in home maintenance, organized group discussions, lectures, information sessions and linkage to treatment services elsewhere, as well as establishing the elements of independent living, such as home and job.

Withdrawal Management (Detoxification):

Before undertaking therapeutic counselling, people must be free of intoxicating substances and their immediate effects. This is particularly true prior to admission into day treatment or intensive residential services. A range of services are offered, including support and supervision (medical and non-medical) to help minimize negative physical effects of withdrawal from addictive and often mood altering substances. Depending on the severity of intoxication and upon the availability of a suitable home environment, detoxification may occur at home, in a supportive recovery facility, a free standing detox facility, or in a hospital. The period of detoxification depends on the intoxicating substances and the general health of the individual. Alcohol withdrawal may require five to seven days; longer acting and sequential poly-drug withdrawal may require several weeks.



The Stages of Change



Transtheoretical Model of Change

This model, used as an approach in Addiction Services, perceives behavioural changes associated with reduced harm or abstinence from substance misuse as a series of stages that a client experiences when in the process of contemplating and/or initiating change. Appropriate and effective counsellor (or other supportive relationship) interventions are suggested at all stages and specific processes are recommended. This theoretical approach is particularly helpful when working with resistant or mandated clients and supports the development of effective client-centered service delivery, by matching clients to treatment modalities and interventions which are congruent with the individual client's readiness for change.



APPENDIX E

LEGISLATION

Disclosure of personal information

33. A public body may disclose personal information only

- (a) in accordance with Part 2,
- (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to its disclosure,
- (c) for the purpose for which it was obtained or compiled or for a use consistent with that purpose (see section 34),
- (d) for the purpose of complying with an enactment of, or with a treaty, arrangement or agreement made under an enactment of, British Columbia or Canada,
- (e) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of information,
- (f) to an officer or employee of the public body or to a minister, if the information is necessary for the performance of the duties of, or for the protection of the health or safety of, the officer, employee or minister,
- (g) to the Attorney General for use in civil proceedings involving the government,
- (h) to the Attorney General or a person referred to in section 37 of the *Coroners Act*, for the purposes of that Act,
- (i) for the purpose of
 - (i) collecting a debt or fine owing by an individual to the government of British Columbia or to a public body, or
 - (ii) making a payment owing by the government of British Columbia or by a public body to an individual,
- (j) to the auditor general or any other prescribed person or body for audit purposes,
- (k) to a member of the Legislative Assembly who has been requested by the individual the information is about to assist in resolving a problem,
- (l) to a representative of the bargaining agent who has been authorized in writing by the employee, whom the information is about, to make an inquiry,
- (m) to the British Columbia Archives and Records Service, or the archives of a public body, for archival purposes,
- (n) to a public body or a law enforcement agency in Canada to assist in an investigation
 - (i) undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result,
- (o) if the public body is a law enforcement agency and the information is disclosed
 - (i) to another law enforcement agency in Canada, or
 - (ii) to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority,
- (p) if the head of the public body determines that compelling circumstances exist that affect anyone's health or safety and if notice of disclosure is mailed to the last known address of the individual the information is about,
- (q) so that the next of kin or a friend of an injured, ill or deceased individual may be contacted, or
- (r) in accordance with sections 35 and 36

Duty to report need for protection

14. (1) A person who has reason to believe that a child needs protection must promptly report the matter to a director or a person designated by a director.
- (2) Subsection (1) applies even if the information on which the belief is based
- (a) is privileged, except as a result of a solicitor-client relationship, or
 - (b) is confidential and its disclosure is prohibited under another Act.
- (3) A person who contravenes subsection (1) commits an offence.
- (4) A person who knowingly reports to a director, or a person designated by a director, false information that a child needs protection commits an offence.
- (5) No action for damages may be brought against a person for reporting information under this section unless the person knowingly reported false information.
- (6) A person who commits an offence under this section is liable to a fine of up to \$10 000 or to imprisonment for up to 6 months, or to both.
- (7) The limitation period governing the commencement of a proceeding under the *Offence Act* does not apply to a proceeding relating to an offence under this section.

Director's right to information

96. (1) A director has the right to any information that
- (a) is in the custody or control of a public body as defined in the *Freedom of Information and Protection of Privacy Act*, and
 - (b) is necessary to enable the director to exercise his or her powers or perform the duties or functions under this Act.
- (2) A public body that has custody or control of information to which a director is entitled under subsection (1) must disclose that information to the director.
- (3) This section applies despite any other enactment but is subject to a claim of privilege based on a solicitor-client relationship.

B.C. Reg. 323/93
O.C. 1281/93

Deposited September 22, 1993

Freedom of Information and Protection of Privacy Act

**FREEDOM OF INFORMATION AND
PROTECTION OF PRIVACY REGULATION**

[effective October 4, 1993]

[Consolidated January 14, 1994]

Who can act for young people and others

3. The right to access a record under section 4 of the Act and the right to request correction of personal information under section 29 of the Act may be exercised as follows:
 - (a) on behalf of an individual under 19 years of age, by the individual's parent or guardian if the individual is incapable of exercising those rights;
 - (b) on behalf of an individual who has a committee, by the individual's committee;
 - (c) on behalf of a deceased individual, by the deceased's nearest relative or personal representative.

Confidentiality of information

24. (1) A person must not disclose, or be compelled to disclose, information obtained in a family conference or mediation, except
- (a) with the consent of everyone who participated in the family conference or mediation,
 - (b) to the extent necessary to make or implement an agreement about the child,
 - (c) if the information is disclosed in an agreement filed under section 23, or
 - (d) if the disclosure is necessary for a child's safety or is required under section 14.
- (2) This section applies despite sections 76, 78 and 79.

1994-27-24.

Confidentiality of information

75. A person must not disclose information obtained under this Act except
- (a) in accordance with section 76 to a person who has a right of access to a record,
 - (b) in accordance with section 78 or 79, or
 - (c) in a report or a summary of a report published under section 87 (2), but only to the extent necessary in the public interest.

1994-27-75

Disclosure with consent

78. A director may disclose information obtained under this Act if a person who under section 76 has a right of access to a record containing that information has consented in the prescribed manner to its disclosure.

Disclosure without consent

79. A director may, without the consent of any person, disclose information obtained under this Act if the disclosure is
- (a) necessary to ensure the safety or well-being of a child,
 - (b) required by section 64 or by order of a court to be made to a party to a proceeding,
 - (c) permitted by the *Young Offenders Act* (Canada),
 - (d) required by an enactment,
 - (e) necessary for a family conference or for mediation under section 22,
 - (f) made when giving or when validly compelled to give evidence in a proceeding,
 - (g) required by the board in the exercise of its powers under section 83 (6) or 85,
 - (h) necessary to enable the Public Trustee to perform duties and exercise powers as guardian of a child's estate under this Act,
 - (i) made to the director's legal counsel,
 - (j) made to caregivers and the information relates to children in their care,
 - (k) necessary for the administration of this Act, or
 - (l) for research purposes in accordance with section 35 of the *Freedom of Information and Protection of Privacy Act*.

B.C. Reg. 527/95

**CHILD, FAMILY AND COMMUNITY SERVICE ACT
CHILD, FAMILY AND COMMUNITY SERVICE**

**Who can exercise information rights
for others**

- 24.** If a person who, under section 76 (1) of the Act, has the right to be given access to a record containing information about him or her and to consent to disclosure of that information is incapable of exercising those rights, they may be exercised on behalf of that person as follows:
- (a) on behalf of an incapable child, by the person, other than the director, in whose legal care child is;
 - (b) on behalf of a deceased person, by the person's personal representative;
 - (c) on behalf of a person who has a committee, by the person's committee.

PROTECTION OF PRIVACY OF YOUNG PERSONS

38. Identity not to be published. — (1) Subject to this section, no person shall publish by any means any report

- (a) of an offence committed or alleged to have been committed by a young person, unless an order has been made under section 16 with respect thereto, or
- (b) of a hearing, adjudication, disposition or appeal concerning a young person who committed or is alleged to have committed an offence

in which the name of the young person, a child or a young person who is a victim of the offence or a child or a young person who appeared as a witness in connection with the offence, or in which any information serving to identify such young person or child, is disclosed.

[R.S.C. 1985, c. 24 (2nd Supp.), s. 29(1)-(2)]

(1.1) *Limitation.* — Subsection (1) does not apply in respect of the disclosure of information in the course of the administration of justice where it is not the purpose of the disclosure to make the information known in the community.

(1.11) *Preparation of reports.* — Subsection (1) does not apply in respect of the disclosure of information by the provincial director or a youth worker where the disclosure is necessary for procuring information that relates to the preparation of any report required by this Act.

[S.C. 1995, c. 19, s. 27(1)]

(1.12) *No subsequent disclosure.* — No person to whom information is disclosed pursuant to subsection (1.1) shall disclose that information to any other person unless the disclosure is necessary for the purpose of preparing the report for which the information was disclosed.

(1.13) *Schools and others.* — Subsection (1) does not apply in respect of the disclosure of information to any professional or other person engaged in the supervision or care of a young person, including the representative of any school board or school or any other educational or training institution, by the provincial director, a youth worker, a peace officer or any other person engaged in the provision of services to young persons where the disclosure is necessary

- (a) to ensure compliance by the young person with an authorization pursuant to section 35 or an order of any court concerning bail, probation or conditional supervision; or
- (b) to ensure the safety of staff, students or other persons, as the case may be.

(1.14) *No subsequent disclosure.* — No person to whom information is disclosed pursuant to subsection (1.13) shall disclose that information to any other person unless the disclosure is necessary for a purpose referred to in that subsection.

(1.15) *Information to be kept separate.* — Any person to whom information is disclosed pursuant to subsections (1.13) and (1.14) shall

- (a) keep the information separate from any other record of the young person to whom the information relates;
- (b) subject to subsection (1.14), ensure that no other person has access to the information; and
- (c) destroy the information when the information is no longer required for the purpose for which it was disclosed.

[S.C. 1995, c. 19, s. 27(1)]

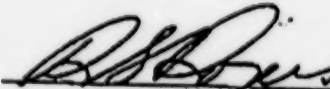
(1.2) *Ex parte application for leave to publish.* — A youth court judge shall, on the *ex parte* application of a peace officer, make an order permitting any person to publish a report described in subsection (1) that contains the name of a young person, or information serving to identify a young person, who has committed or is alleged to have committed an indictable offence, if the judge is satisfied that

- (a) there is reason to believe that the young person is dangerous to others; and
- (b) publication of the report is necessary to assist in apprehending the young person.

(1.3) *Order ceases to have effect.* — An order made under subsection (1.2) shall cease to have effect two days after it is made.

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

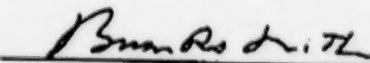
Order in Council No. 2162, Approved and Ordered DEC - 4.1986



Lieutenant Governor

Executive Council Chambers, Victoria DEC - 3.1986 Amn. 432/87, 847/90

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the persons or classes of persons that are designated under section 44.1 (1) of the *Young Offenders Act* (Canada) as persons or classes to whom a record may on request be made available are

- (a) the ombudsman, for a purpose necessary to fulfill the obligations or duties imposed under the *Ombudsman Act*,
- (b) the Workers' Compensation Board or an officer or employee of that Board carrying out a statutory function under the *Workers Compensation Act* or *Criminal Injury Compensation Act*,
- (c) a person authorized in writing by the provincial director as a person carrying out an approved program of research relating to or affecting young persons, and
- (d) a minister of the Crown, or an officer or employee of a provincial ministry, or agent of the Crown, having statutory functions or duties relating to the employment, education, health, welfare or other matter relating to young persons, but only in relation to the exercise of those functions or duties.


Attorney General


Presiding Member of the Executive Council

(This part is for the records of the Office of Legislative Counsel, and is not part of the Order.)

Authority under which Order is made:

Act and section:-.....*Young Offenders Act* (Canada), s. 41.1 (1) (h).....

Other (specify):-.....

Examined by G.B. Macaulay.....

(Attorney General examiner)

October 30, 1986

3128 /86/b

(2.1) *Records of forensic DNA analysis of bodily substances.* — Notwithstanding subsections (1) and (5), any record that is kept pursuant to any of sections 40 to 43 and that is a record of the results of forensic DNA analysis of a bodily substance taken from a young person in execution of a warrant issued under section 487.05 of the *Criminal Code* may be made available for inspection under this section only under paragraph (1)(a), (c), (d), (e), (f), (h) or subparagraph (1)(k)(iii).

[S.C. 1995, c. 27, s. 2]

(3) *Introduction into evidence.* — Nothing in paragraph (1)(e) authorizes the introduction into evidence of any part of a record that would not otherwise be admissible in evidence.

(4) *Disclosures for research or statistical purposes.* — Where a record is made available for inspection to any person under paragraph (1)(j) or subparagraph (1)(k)(i), that person may subsequently disclose information contained in the record, but may not disclose the information in any form that would reasonably be expected to identify the young person to whom it relates.

(5) *Record made available to victim.* — Any record that is kept pursuant to sections 40 to 43 may, on request, be made available for inspection to the victim of the offence to which the record relates.

(6) *Disclosure of information and copies of records.* — Any person to whom a record is required or authorized to be made available for inspection under this section may be given any information contained in the record and may be given a copy of any part of the record.

[R.S.C. 1985, c. 24 (2nd Supp.), s. 34; 1995 c. 27, s. 2]

44.2. *Disclosure by peace officer during investigation.* — (1) A peace officer may disclose to any person any information in a record kept pursuant to section 42 that it is necessary to disclose in the conduct of the investigation of an offence.

(2) *Disclosure to insurance company.* — A peace officer may disclose to an insurance company information in any record that is kept pursuant to section 42 for the purpose of investigating any claim arising out of an offence committed or alleged to have been committed by the young person to whom the record relates.

[R.S.C. 1985, c. 24 (2nd Supp.), s. 34]

Disclosure of Records

44.1. Records made available. — (1) Subject to subsections (2) and (2.1), any record that is kept pursuant to section 40 shall, and any record that is kept pursuant to sections 41 to 43 may, on request, be made available for inspection to

- (a) the young person to whom the record relates;
- (b) counsel acting on behalf of the young person or any representative of that counsel;
- [S.C. 1995, c. 19, s. 30(1)]
- (c) the Attorney General or his agent;
- (d) a parent of the young person or any adult assisting the young person pursuant to subsection 11(7), during the course of any proceedings relating to the offence or alleged offence to which the record relates or during the term of any disposition made in respect of the offence;
- (e) any judge, court or review board, for any purpose relating to proceedings relating to the young person under this Act or to proceedings in ordinary court in respect of offences committed or alleged to have been committed by the young person, whether as a young person or an adult;

(f) any peace officer,

- (i) for the purpose of investigating any offence that the young person is suspected on reasonable grounds of having committed, or in respect of which the young person has been arrested or charged, whether as a young person or an adult,
- (ii) for any purpose related to the administration of the case to which the record relates during the course of proceedings against the young person or the term of any disposition;
- (iii) for the purpose of investigating any offence that another person is suspected on reasonable grounds of having committed against the young person while the young person is, or was, serving a disposition, or
- (iv) for any other law enforcement purpose;

[S.C. 1992, c. 1, s. 143 (Sch. VI, s. 21); 1995, c. 19, s. 30(2)]

- (g) any member of a department or agency of a government in Canada, or any agent thereof, that is

- (i) engaged in the administration of alternative measures in respect of the young person,
- (ii) preparing a report in respect of the young person pursuant to this Act or for the purpose of assisting a court in sentencing the young person after he becomes an adult or is transferred to ordinary court pursuant to section 16,
- (iii) engaged in the supervision or care of the young person, whether as a young person or an adult, or in the administration of a disposition or a sentence in respect of the young person, whether as a young person or an adult, or
- (iv) considering an application for parole or pardon made by the young person after he becomes an adult;
- (b) any person, or person within a class of persons, designated by the Governor in Council, or the Lieutenant Governor in Council of a province, for a purpose and to the extent specified by the Governor in Council or the Lieutenant Governor in Council, as the case may be;
- (i) any person, for the purpose of determining whether to grant security clearances required by the Government of Canada or the government of a province or a municipality for purposes of employment or the performance of services;
- (j) any employee or agent of the Government of Canada, for statistical purposes pursuant to the *Statistics Act*; and
- (k) any other person who is deemed, or any person within a class of persons that is deemed, by a youth court judge to have a valid interest in the record, to the extent directed by the judge, if the judge is satisfied that the disclosure is
 - (i) desirable in the public interest for research or statistical purposes, or
 - (ii) desirable in the interest of the proper administration of justice.

(2) *Exception.* — Where a youth court has withheld the whole or a part of a report from any person pursuant to subsection 13(6) or 14(7), the report or part thereof shall not be made available to that person for inspection under subsection (1).

(1.4) *Application for leave to publish.* — The youth court may, on the application of any person referred to in subsection (1), make an order permitting any person to publish a report in which the name of that person, or information serving to identify that person, would be disclosed, if the court is satisfied that the publication of the report would not be contrary to the best interests of that person.

[R.S.C. 1985, c. 24 (2nd Supp.), s. 29(3)]

(1.5) *Disclosure with court order.* — The youth court may, on the application of the provincial director, the Attorney General or an agent of the Attorney General or a peace officer, make an order permitting the applicant to disclose to such person or persons as are specified by the court such information about a young person as is specified if the court is satisfied that the disclosure is necessary, having regard to the following:

- (a) the young person has been found guilty of an offence involving serious personal injury;
- (b) the young person poses a risk of serious harm to persons; and
- (c) the disclosure of the information is relevant to the avoidance of that risk.

(1.6) *Opportunity to be heard.* — Subject to subsection (1.7), before making an order under subsection (1.5), the youth court shall afford the young person, the young person's parents, the Attorney General or an agent of the Attorney General an opportunity to be heard.

(1.7) *Ex parte application.* — An application under subsection (1.5) may be made *ex parte* by the Attorney General or an agent of the Attorney General where the youth court is satisfied that reasonable efforts have been made to locate the young person and that those efforts have not been successful.

(1.8) *Time limit.* — No information may be disclosed pursuant to subsection (1.5) after the record to which the information relates ceases to be available for inspection under subsection 45(1).

[S.C. 1995, c. 19, s. 27(2)]

(2) *Contravention.* — Every one who contravenes subsection (1), (1.12), (1.14), (1.15)

(a) is guilty of an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

[S.C. 1995, c. 19, s. 27(3)]